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Voluntary Public

Date: 12/14/2010

GAIN Report Number:

China - Peoples Republic of

Post: Beijing

Administrative Measures on Import and Export Food Safety

Report Categories:

FAIRS Subject Report

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Report Highlights:

On November 15, China's General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) notified the WTO of Administrative Measures on Import and Export Food Safety as G/SPS/N/CHN/314. The comment period for this draft measure ends on January 14, 2011. China has not yet determined an implementation date for the proposed Measures. This report is an INFORMAL translation of this document.

Executive Summary:

On November 15, China's General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) notified the WTO of Administrative Measures on Import and Export Food Safety as G/SPS/N/CHN/314. These Measures apply to inspection, quarantine and safety supervision and management of foods for import and export. China will accept comments on these draft measures until January 14, 2011. The proposed implementation date is to be determined. Thanks to Australian Embassy Beijing for providing a preliminary translation of these Measures.

Comments can be sent to China's SPS Enquiry Point at sps@aqsiq.gov.cn

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General Information:

BEGIN TRANSLATION

Administrative Measures on Import and Export Food Safety**Chapter I General Provisions**

Article 1 In order to guarantee import and export food safety and also protect the life and health of humans, animals and plants, the Measures are hereby formulated in accordance with the Food Safety Law of the People's Republic of China and its enforcement regulations, the Law of the People's Republic of China on Import and Export Commodity Inspection and its enforcement regulations, Special Rules of the State Council on Strengthening the Supervision and Management of the Safety of Food and Other Products as well as stipulations in other laws and regulations.

Article 2 The Measures are applicable to the inspection, quarantine, supervision and management of import and export food. Safety management on additives in imported and exported food, food related products, grains, fruits and edible live animals shall be carried out according to pertinent provisions.

Article 3 The General Administration of Quality Supervision, Inspection and Quarantine of P.R.C. (hereinafter referred to as AQSIQ) is in charge of import and export food safety supervision and management throughout the country.

Entry-exit inspection and quarantine agencies (hereinafter referred to as inspection and quarantine agencies) established at each place by AQSIQ are under its centralized leadership so as to do the import and export food safety supervision and management work pursuant to the law.

Article 4 AQSIQ mainly carries out the following work: registration of overseas import food manufacturers; archiving administration of exporters or agents that export food to China; inspection of imported food; administration of exported food manufacturers; traceability of raw materials sources used in exported; supervision and sampling inspection of exported food; classification management of imported and exported food; management of the integrity of import and export food manufacturers and operators.

Article 5 Import and export food manufacturers and operators shall be honest and trustworthy to guarantee food safety so as to be responsible for the society and the public. They are also required to receive social supervision and undertake social responsibilities.

Article 6 Personnel (hereinafter referred to as inspection and quarantine officers) engaging in import and export food safety supervision and management in inspection and quarantine agencies are required to be equipped with relevant professional knowledge and receive corresponding training.

Chapter II Food Import

Article 7 AQSIQ will assess food safety management systems in countries or regions that export food to China, and also conduct retrospective reviews as required by import food safety supervision and management.

AQSIQ will also determine corresponding inspection and quarantine requirements based on stipulations in Chinese laws and regulations, national standard requirements on food safety, epidemic situation and epidemic disease at home and abroad as well as risk analysis results on poisonous and hazardous substances in combination with system evaluation and review results specified in the preceding article.

Article 8 Imported food shall satisfy national food safety standards in China as well as related quarantine requirements. Before issuance of a national food safety standard, an inspection shall be implemented in accordance with the current quality and safety standards on edible agricultural products, food hygienic standards, food quality standards as well as mandatory standards in food related industries.

For foods imported for the first time that have no national food safety standard, the consignee shall submit the permit certificate issued by the health administration department of the State Council to the inspection and quarantine agency which shall conduct an inspection as required by the Health Administration Department of the State Council.

Article 9 AQSIQ will implement a registration system for overseas food manufacturers that export food to China and the registration work shall be carried out on the basis of pertinent stipulations by the AQSIQ.

Exporters or agents that export food to China shall be put on record by AQSIQ. Those who applied for archiving shall provide enterprise information for archiving and be responsible for its authenticity as required.

The registration and archiving list shall be made public.

Article 10 Imported foods that require an approval for import plant and animal quarantine shall obtain a Quarantine Permit of the Peoples' Republic of China for Import Animals and Plants in advance.

Article 11 High risk imported food, for which the risk of an epidemic situation or epidemic disease or poisonous or hazardous substances might exist, shall be imported at designated ports. Conditions and the list of designated ports will be

determined and published by AQSIQ.

Article 12 A consignee of imported food or his agent shall take the following materials for quarantine application to the local inspection and quarantine agency where the customs is located as required:

- (I) Necessary certificates like contract, invoice, packing list, bill of lading, etc;
- (II) Related approval documents;
- (III) Official quarantine (health) certificates from the exporting country (region) that are required to be submitted by laws and regulations, bilateral agreement or protocol, etc.
- (V) In case of an imported prepackaged food for the first time, it is required to provide a sample and translation of the import food label;
- (VI) When importing food with no national food safety standard for the first time, it is required to provide permit certificate specified in Article 9 of these Measures;
- (VII) Other official certificates or supporting documents that shall be attached for imported food.

When applying for inspection and quarantine, the consignee or his agent shall apply for quarantine for the imported food one by one in accordance with commodity name, brand, country (region) of origin, specification, quantity/weight, gross value, production date (lot number) as well as other contents specified by AQSIQ.

13 The inspection and quarantine agency shall check and review quarantine application materials submitted by the consignee or his agent, and accept those satisfactory applications.

Article 14 Packaging and transportation tools used for imported food shall meet safety and hygienic requirements and shall be qualified through inspection and quarantine.

Article 15 Chinese labels and Chinese instruction books for imported prepackaged food shall comply with stipulations in Chinese laws and regulations as well as requirements of national food safety standards.

Article 16 Inspection and quarantine agencies shall examine whether the contents of the label comply with laws and regulations as well as requirements in the national food safety standards, and also verify the authenticity and accuracy for contents related to quality, including inspection on format, layout and compliance of contents indicated on the label.

If award, certificate, producing area and other contents are emphasized in the label or instruction book of imported food, or special components are stressed to be contained in the food, it is necessary to provide corresponding certificates.

Article 17 Before acquiring the inspection and quarantine certificate, imported food shall be placed at a surveillance area designated or approved by the inspection and quarantine agency. No unit or individual is allowed to move it without the approval of the inspection and quarantine agency.

Article 18 After the inspection and quarantine is determined as qualified; the inspection and quarantine agency will issue a certificate on the imported food, granting its sale and usage. Certificate issued by the inspection and quarantine agency shall list commodity name, brand, country (region) of origin, specification, quantity/weight and production date (lot number) one by one. In the absence of brand or specification, it shall be marked as “None”.

With regard to imported food found unqualified during inspection and quarantine, the inspection and quarantine agency shall issue an unqualified certificate. If the unqualified items involve safety, health, or environmental protection, the inspection and quarantine agency shall order the party concerned to destroy the food, or produce a rejection notice for the consignee to go through the rejection process. If other items are unqualified, technical treatment may be applied under the monitoring of the inspection and quarantine agency. Once the food passes the re-inspection, it can be sold or used.

Article 19 Inspection and quarantine agencies shall keep a record of the consignee of imported food, and the consignee shall, at the local inspection and quarantine agency, provide the following documents:

- (I) Application form, which shall be filled completely and correctly;
- (II) Originals and copies of industrial and commercial business license, organization code certificate, ID of legal representative, foreign trade business registration forms;
- (III) Enterprise quality and safety management system;
- (IV) Establishment, functions and responsibilities of organizational structures relating to food safety;
- (V) Categories and storage location of food proposed to be processed;
- (VI) Relevant document indicating food import, processing and marketing (categories and amount) within the past two years;
- (VII) Regarding self-care inspection items, the originals and copies of archiving certificate of self-care inspection unit shall be submitted.

After reviewing information provided by the enterprise, the inspection and quarantine agencies shall approve the filing.

Article 20 The consignee of imported food shall establish a record system of food importation and marketing, for the purpose of faithfully recording the serial number of imported food’s health certificate, product name, specification, amount, manufacturing date, batch number, shelf life, names and contact information for exporters and consignees, and delivery date, etc. The recorded items shall be true and retained for no less than two years.

The inspection and quarantine agency shall inspect the food importation and marketing record of the consignee under its jurisdiction.

Article 21 AQSIQ adopts a risk monitoring system on imported food and manages the formulation and implementation of the annual risk monitoring plan on imported food.

The inspection and quarantine agencies shall conduct and report the risk monitoring for imported food in accordance with AQSIQ’s risk monitoring plan.

In accordance with the results of the risk monitoring on imported food, the inspection and quarantine agencies shall adjust the inspection, quarantine and monitoring measures on related imported food on the basis of risk analysis.

Article 22 If imported food materials are used for processing and re-export, the inspection and quarantine agencies shall inspect the food according to the mandatory requirements of the technical specifications of export food destination countries (regions) or requirements specified in the trade contract.

Article 23 If the inspection and quarantine agencies find unqualified imported food, they may put the overseas manufacturer, exporter, consignee, applicant and agent of the imported food on a negative list; for those violating laws and receiving an administrative penalty, the inspection and quarantine agencies may record them on a list of illegal enterprises which will be publicly available.

Chapter III Food Export

Article 24 The manufacturer and operator of exported food shall ensure that the exported food meets related national (regional) standards and contract requirements.

If the importing countries (regions) have no related standards and the contract has no specific requirements, the exported food shall satisfy China's national food safety standards.

Article 25 The manufacturer of exported food shall establish a quality safety management system.

The manufacturer of exported food shall prepare a purchase inspection and record system for raw materials, auxiliary materials, food additives, packaging material and containers.

The manufacturer of exported food shall establish production records, for the purpose of faithfully recording the information about safety management of exported food during production.

The manufacturer of exported food shall establish an ex-factory inspection record system, for the purpose of inspecting exported food according to requirements specified in the Measures. Declaration and inspection shall be conducted after qualified inspection is achieved.

Aforesaid record shall be authentic, and retained for no less than two years.

Article 26 AQSIQ shall adopt a filing system of export food manufacturers, and the filing process shall comply with related requirements of AQSIQ.

Article 27 The inspection and quarantine agencies shall be responsible for monitoring and managing the implementation of quality safety and sanitary management system established by the export food manufacturers.

Article 28 AQSIQ shall retain records of producers of raw materials of exported food, and such producers shall handle archiving procedures at local inspection and quarantine agencies.

Contents and terms of raw materials shall be formulated by AQSIQ. The raw material of exported food shall be sourced from registered producers (planting and cultivation) for those listed in the Contents.

The list of registered raw material producers shall be released by AQSIQ.

Article 29 Local inspection and quarantine agencies shall monitor and inspect the production farms. For those failing to satisfy specified requirements, such agencies shall report to the local governmental administration and the inspection and quarantine agencies located in the place where the exported food manufacturers are based.

Regarding quality safety and sanitary information of raw materials, the local inspection and quarantine agencies of export food manufacturers shall make a prompt report to the inspection and quarantine agencies of archived producing farms.

Article 30 The producing farms shall establish a production record system of raw materials, and this record shall be authentic, with a retention period of no less than two years. The archived producers shall comply with the food safety standards of importing countries (regions) and related requirements of China to use agricultural chemicals and establish epidemic disease surveillance system. In addition, these producers shall issue supply certificates of processed materials of export products accompanying with every batch of raw materials.

Article 31 AQSIQ shall adopt a risk surveillance system for export food safety, and prepare and implement an annual surveillance plan on export food safety risk.

The inspection and quarantine agencies shall make a risk surveillance of exported food and report results pursuant to a surveillance plan for export food safety risk prepared by AQSIQ.

In accordance with safety risk surveillance results of exported food, the inspection and quarantine agencies shall adjust the inspection, quarantine and monitoring measures of related exported food on the basis of risk analysis.

Article 32 The consignee or agent of exported food shall apply for inspection to local inspection and quarantine agencies of export food manufacturers through issuing required certificates and related approval documents like contract, invoice, packaging list, ex-factory qualification certificate, supply certificate of processed material of export food. When applying for inspection, the product name, specifications, amount/weight and manufacturing date of exported food shall be listed individually.

Article 33 According to related information including categorized management requirements of exported food, local exported food types, previous export information, safety record and requirements of destination countries (regions), the local inspection and quarantine agencies shall formulate a sample inspection plan for exported food under their jurisdiction through risk analysis.

The inspection and quarantine agencies shall inspect exported food in conformity with its sampling inspection plan, related standards, specifications and requirements.

In the case of bilateral agreement, the sampling inspection of exported food shall satisfy the requirements under such an agreement.

Article 34 For exported food satisfying exporting requirements, the inspection and quarantine agencies shall issue customs clearance certificate and related documents. In the case where the destination countries (regions) issues new requirements to the forms and contents of certificates, the inspection and quarantine agencies may modify the certificate after obtaining approval from AQSIQ.

For export food failing to satisfy inspection and quarantine requirements, the inspection and quarantine agencies shall issue an unqualified certificate; for those requiring technical processing, the processing shall be conducted under the monitoring of the inspection and quarantine agencies. Those products may be exported after being qualified. Additionally, those products that fail remain unqualified after technical processing, are prohibited from entry.

Article 35 Packaging and transport measures for exported food shall meet safety and sanitary requirements, and achieve qualified inspection and quarantine certificate.

Article 36 For delivery means used to ship perishable export food and frozen food such as containers, ship compartment, airplanes and vehicles, the carrier, packing unit or its agent shall apply to inspection and quarantine agencies for inspection on sanitation, refrigeration and security of the delivery means before shipping. Those means that have not been inspected or failed the inspection shall not be used.

Article 37 The manufacturer of export food shall specify the manufacturer's name, file number, product name, batch number and production date on transport package. The inspection and quarantine agencies shall indicate aforesaid information on issued certificate. Under the premise that product traceability is available, the specified contents may be adjusted appropriately after the approval of inspection and quarantine agencies is obtained.

For export food requiring inspection and quarantine signs, the requirements of AQSIQ shall prevail.

Article 38 Where the exported food, which has met export requirements of the inspection and quarantine agency at the place of origin, are transported to the port, the inspection and quarantine agency at the place of origin may implement supervision and management by supervising loading, sealing and electronic lock or using methods such as global positioning system.

Article 39 Where the exported food has met the export requirements of the inspection and quarantine agency at the place of origin, the inspection and quarantine agency at the port shall implement examination according to provisions. Food that is unqualified by the examination at the port shall not be exported.

The inspection and quarantine agency at the port shall provide notice of the relevant information to the inspection and quarantine agency at the place of origin immediately according to provisions. And the inspection and quarantine agency at place of origin shall take corresponding supervision measures according to the causes of disqualifications.

Article 40 Operators of exported food that are not in conformity with statutory requirements can be listed with bad records by the inspection and quarantine agencies; and operators which have conducted unlawful acts and received administrative

punishments can be listed on the list of illegal enterprises and notified to the public.

Chapter IV Risk Warning and Relevant Measures

Article 41 AQSIQ adopts risk warning system on export food.

Where there exists serious safety problems or epidemics in the imported or exported food, and food security incidents or epidemics occurring at home and abroad might influence the safety of imported and exported food, then AQSIQ and inspection and quarantine agencies shall adopt risk warning or control measures immediately.

Article 42 AQSIQ and inspection and quarantine agencies shall establish a safety information network of imported and exported food, collecting and arranging food safety information which mainly includes:

- (I) Food safety information discovered by inspection and quarantine agencies when inspecting imported and exported food;
- (II) Import food safety information that is reflected by industry associations and customers;
- (III) Food safety information and risk warning information issued by international organizations and foreign governmental agencies as well as food safety information reflected by foreign industry associations and customers.
- (V) Other food safety information.

Article 43 Inspection and quarantine agencies shall, according to requirements and procedures stipulated, report to the AQSIQ and inform local governments and relevant departments of the approved and arranged food safety information.

Article 44 AQSIQ and local inspection and quarantine agency shall, according to relevant provisions, analyze and study the risks of the food safety information collected to determine the level of risk information.

Article 45 AQSIQ and local inspection and quarantine agencies shall, according to the level of food safety risk information, release risk warning notifications and take the following control measures:

- (I) Restrict import and export conditionally, including strict monitoring, tightened inspection and mandatory recall;
- (II) Import and export prohibition, field destroy or return;
- (III) Start the emergency plan on safety of import and export food.

Inspection and quarantine agencies are in charge of carrying out risk warning or control measures.

Article 46 As for uncertain risks, AQSIQ may directly release risk warning notifications following standard international practices, and adopt the control measures stipulated in Article 45 of these Measures, and immediately collect and replenish relevant information and data for risk analysis at the same time.

Article 47 AQSIQ or local inspection and quarantine agencies shall, if no safety risk of imported and exported food exists or the level of safety has decreased to an acceptable level, make an announcement to lift the risk warning notification and control measures it issued before.

Article 48 Where the imported food has safety problems that have caused or are likely to cause damages to human health and safety, the consignee of imported food shall recall it voluntarily and report it to the local inspection and quarantine agency. The consignee of imported food shall release relevant information to the public, notify the wholesalers and sellers to stop distribution, inform the customers to stop using, and make a recall record of the food.

Inspection and quarantine agency shall, after receiving the report, prepare an examination and report the results to superior according to provisions.

Where the consignee of imported food refuses to recall the food at issue, the local inspection and quarantine agency shall send it a notice of mandatory recall and report the situation to AQSIQ. AQSIQ may release a risk warning notification, and adopt the measures stipulated in Article 45 of these Measures and other measures in order to prevent danger.

Article 49 Where the exported food is discovered to have safety problems that have already caused or are likely to cause damage to human health and safety, manufactures of export food shall take measures to prevent damages from occurring and to reduce damages, and report to the local inspection and quarantine agency immediately.

Article 50 When performing inspection and quarantine supervision and management of the imported and exported food according to laws, the inspection and quarantine agencies have the right to adopt the following measures:

- (I) Enter the production and operation places for site inspection;
- (II) Look up, copy, seal and detain relevant contracts, bills, books of account and other relevant data;
- (III) Seal up and detain the products that are not in conformity with statutory requirements, the raw materials, auxiliary materials, additives, agricultural input products that are illegally used and instruments and equipments used in illegal production;
- (V) Real the production and operation places that pose significant risk to human health and safety.

Article 51 Inspection and quarantine agencies shall, according to relevant provisions, report to the AQSIQ and notify the local governments and relevant departments of the control measures taken.

AQSIQ shall, according to relevant provisions, notify relevant departments of the food safety information and control measures taken.

Chapter V Legal Liability

Article 52 In the case of violation of provisions related to designated area surveillance as prescribed in Article 17 of these Measures with no gains, the inspection and quarantine agency shall order a correction by the violator and impose a fine of no more than 10,000 yuan.

Article 53 In the case of the sale or use of imported food that does not comply with national food safety standards, the violator shall be punished by the inspection and quarantine agency in accordance with Articles 85 and 89 of the Food Safety

Law.

Article 54 If the importer commits one of the following, the inspection and quarantine agency shall handle the case in accordance with Articles 85 and 87 of the Food Safety Law:

- I. Fails to establish a record system on food import and sales;
- II. The established record of import and sales fails to indicate the serial number of the health certificate, product name, specifications, quantities, production date, batch number, shelf life, name and contact information of the exporter and consignee, and delivery date for the imported food.
- III. The established record of import and sales is less than two years.

Article 55 Where a raw material producer or manufacturing enterprise of exported food commits one of the following, it shall be ordered to correct the errors and be fined less than three times of the illegal gain up to a maximum of 30,000RMB if there are any illegal gains. It shall be fined less than 10,000 RMB if there is no illegal gain:

(I) Where agricultural input chemicals are used in violation of regulations in the process of raw material planting and breeding of export food;

(II) Where relevant records are untrue or the record is less than two years.

Where a manufacturer of exported food uses materials that did not originate from a registered producer, it shall be punished according to the preceding Article.

Article 56 In the case of one of the following situations, the inspection and quarantine agency shall handle in accordance with Articles 85 and 89 of the Food Safety Law:

- I. Exported food without inspection or failed inspection;
- II. Replacing exported food that has been sample-inspected and granted an inspection and quarantine certificate by an inspection and quarantine agency.

Article 57 Where a producer, operator, inspection and quarantine agency, or inspector of imported and exported food has other illegal actions, it shall be punished according to the provisions of relevant laws and regulations.

Chapter VI Supplementary Provisions

Article 58 Food manufacturers and operators include the manufacturing enterprises, consignees and consignors, importers and exporters as well as agents.

Article 59 The inspection, quarantine and supervision of food under special supervision of the customs and small levels of import and export food traded at the border shall be conducted according to relevant provisions of AQSIQ.

Article 60 Food imported and exported by express delivery, mail or by travelers shall be in accordance with relevant provisions of AQSIQ.

Article 61 For imported and exported food which is a non-trading sample, present, gift, exhibition, imported duty-free and used by embassies and consulates and exported food used by embassies and consulates as well as expatriate personnel of Chinese enterprises, shall be transacted according to relevant national provisions.

Article 62 For food supplied to Hong Kong and Macao Special Administrative Regions as well as Taiwan region, provisions otherwise specified shall prevail.

Article 63 These Measures are interpreted by AQSIQ.

Article 64 These Measures shall go into force as of ____/____, 2010.

END TRANSLATION